TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 614

MAX SONZINSKY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 2, 1937.

CERTIORARI GRANTED FEBRUARY 15, 1937.

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1 Pleas in the District Court of the United States Within and for the Eastern District of Illinois at a Regular Term Thereof, Begun and Held in the United States Court Room, in the City of East St. Louis, in Said District, Before the Honorable Fred L. Wham, Judge of Said Court, on the First Monday of May, in the Year of Our Lord One Thousand Nine Hundred and Thirty Six, and of the Independence of the United States of America, the One Hundred and Sixtieth Year. Placita.

(Signed) D. H. REED,
Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Illinois.

Tuesday, May 5th, A. D. 1936.

Present: Honorable Fred L. Wham, Judge.

The Grand Jurors for the May Term, A. D. 1936, of the District Court of the United States for the Eastern District of Illinois, on the 5th day of May, A. D. 1936 return into open court Seventy-Five (75) True Bills and Three (3) No True Bills as follows:

* * * * * *

Violation National Firearms Act:

The United States *vs.* Max Sonzinsky } Criminal No. 14452. Bail set at $2,000.00.

* * * * * *

Be it remembered, that heretofore, to-wit: On the 5th day of May, A. D. 1936, the Grand Jurors of the United States of America, chosen, selected and sworn for the Eastern District of Illinois, returned into open court an indictment against the above captioned defendant for Violation of the National Firearms Act, which said indictment was duly signed by the District Attorney for the Eastern District of Illinois, and endorsed by the Foreman of the said Grand Jury, as a "True Bill" and which said indictment was and is in the words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Eastern District of Illinois.

May Term, A. D. 1936.

Eastern District of Illinois ss.

The Grand Jurors for the United States of America empaneled and sworn in the District Court of the United States

of America, for the Eastern District of Illinois, at the May Term of said court in the year 1936, and inquiring for said district upon their oaths present: that Max Sonzinsky hereinafter called the defendant, on or about the 9th day of April, A. D. 1936, at or near East St. Louis, in the County of St. Clair, in the State of Illinois and in the Eastern District of Illinois and within the jurisdiction of this Court, and within the Eighth Internal Collection District of Illinois, did unlawfully, knowingly, fraudulently and feloniously carry on the business of a dealer in firearms at 453 Collinsville Avenue, East St. Louis, Illinois, aforesaid, without having paid the special tax therefor, as required by virtue of Section 1132a of the United States Code Annotated.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) ARTHUR ROE,
United States Attorney.

4 Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that Max Sonzinsky hereinafter called the defendant, on or about the 9th day of April, A. D. 1936, at East St. Louis, in the County of St. Clair, in the State of Illinois, and in the Eastern District of Illinois, and within the jurisdiction of this Court, did unlawfully, knowingly and feloniously receive and have in his possession a certain firearm, to-wit: One (1) sawed-off shot gun with a fifteen and seven-eighths (15⅞) inch barrel, a more particular description being to the Grand Jurors unknown, which said firearm had come into his possession not in pursuance of a written order from the said Max Sonzinsky on application upon a blank, in duplicate, issued by the Commissioners of Internal Revenue.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) ARTHUR ROE,
United States Attorney.

5 Third Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that Max Sonzinsky hereinafter called the defendant, on or about the 9th day of April, A. D. 1936, at East St. Louis, in the County of St. Clair, in the State of Illinois, and in the Eastern District of Illinois, and within the jurisdiction of this Court, did unlawfully, knowingly and feloniously possess a certain firearm to-wit: a sawed-off shot gun with a barrel fifteen and seven-eighths (15⅞) inches in length, a more particular description being to the Grand Jurors unknown, which said firearm had not theretofore been registered with the Collector of Internal Revenue at Springfield, Illinois, as provided by law.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) ARTHUR ROE,
United States Attorney.

6 Fourth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present: that Max Sonzinsky hereinafter called the defendant on or about the 9th day of April A. D. 1936, at or near East St. Louis, in the County of St. Clair, in the State of Illinois, in the Eastern District of Illinois, and within the jurisdiction of this Court, and within the Eighth Internal Revenue Collection District of Illinois, did unlawfully, knowingly, wilfully and feloniously attempt to defeat and evade a tax of Three Hundred Dollars ($300.00); said tax being the amount prescribed by law to be paid by dealers of fire arms under Section 1132c, Title 26, United States Code Annotated; said Max Sonzinsky being a person required by law on or about said date, as aforesaid, to make to the Collector of Internal Revenue for the Eighth Internal Collection District of the State of Illinois, a certificate of registration as a dealer in firearms for the quarter from April 1, 1936 to June 30, 1936, stating specifically the kind, make and serial numbers of fire arms to be dealt in by him and that no certificate of registration has been filed with said Collector and that there has been nothing paid to said Collector of said tax and that no payments have been paid on

account of this tax for the quarter to any proper officer of the United States.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

(Signed) ARTHUR ROE,
United States Attorney.

6½ (Endorsed) Original No. 14452 United States District Court Eastern District of Illinois ..... Division The United States of America *vs.* Max Sonzinsky Indictment Vio. National Firearms Act A true bill, Signed—Jno. C. Reimann, Foreman Filed May 5-1936 D. H. Reed, Clerk. Bail $2000.00 Signed—Arthur Roe, U. S. Attorney.

7 And afterwards, to-wit: On the 11th day of May, A. D. 1936, the following further proceedings were had in said court in said cause, and entered of record, to-wit: Entered M 1936.

7½ IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—14452) * *

Monday, May 11th, A. D. 1936.

Present: Honorable Fred L. Wham, Judge.

Appearances:

Arthur Roe, United States Attorney, for Plaintiff.

Defendant Max Sonzinsky, in person.

Defendant enters plea of not guilty.

8 And afterwards, to-wit: On the 18th day of May, A. D. 1936, the following further proceedings were had in said court in said cause, and entered of record, to-wit:

ed May 18, 9 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—14452) * *

Monday, May 18th, A. D. 1936.

Present: Honorable Fred L. Wham, Judge.

Appearances:

Arthur Roe, United States Attorney, for plaintiff.

Defendant in person, and by J. M. Karns and H. G. Bandy his attorneys.

Comes now the defendant by his attorneys and presents to the court his motion for leave to withdraw his plea of not guilty and that he be granted leave to file demurrer to the indictment herein, which said motion is by the court allowed, and demurrer filed. Hearing on demurrer, and after arguments thereon, it is ordered by the court that said demurrer be and it is hereby overruled, to which rulings of the court the defendant by his attorney then and there excepts.

Defendant enters plea of not guilty—case announced ready for trial—following named jurors tendered, accepted and sworn to try cause: J. O. Throgmorton, Armon L. Fridrichs, Joseph Decker, Philip J. May, J. W. Harrington, John Vallowe, Carl Mannle, G. L. James, Wm. Reifschneider, E. H. Hawkins, Henry O. Evans, Harmon Summers.

After hearing statements of respective counsel and evidence on behalf of the plaintiff, comes the defendant by his said attorneys and presents to the court his motion for a directed verdict finding the said defendant not guilty as charged in the indictment, which said motion is by the court denied and to which ruling of the court the defendant by his attorneys then and there excepts.

And now comes the defendant by his said attorneys and presents to the court his motion for a directed verdict finding the defendant not guilty as charged in the first count of the indictment, which said motion is by the court denied and to which ruling of the court the defendant by his attorneys then and there excepts.

And now comes the defendant by his said attorneys and presents to the court his motion for a directed verdict finding the defendant not guilty as charged in the second count of the indictment, which said motion is by the court denied and

to which ruling of the court the defendant by his attorneys then and there excepts.

And now comes the defendant by his said attorneys and presents to the court his motion for a directed verdict finding the defendant not guilty as charged in the third count of the indictment, which said motion is by the court denied and to which ruling of the court the defendant by his attorneys then and there excepts.

10 And now comes the defendant by his said attorneys and presents to the court his motion for a directed verdict finding the defendant not guilty as charged in the fourth count of the indictment, which said motion is by the court allowed.

Defendant waives testimony, and comes now by his attorneys and renews his motions for a directed verdict as to each count of the indictment separately except as to the fourth count of the indictment, which said motions are by the court overruled, to which ruling of the court the defendant by his attorney then and there excepts. After hearing arguments of counsel the court instructs the jury to return a verdict of not guilty as charged in the Third and Fourth Counts in the indictment as to the said defendant Max Sonzinsky, and after hearing further instructions of the court, the jury retire to consider their verdict, and afterward return into court the following verdict: "We, the jury, find the defendant Max Sonzinsky guilty as charged in the First and Second counts of the indictment in this case." Whereupon, it is ordered by the court that this cause be and it is hereby continued to nine A. M. May 21st, A. D. 1936.

11 And on the same day, to-wit: On the 18th day of May, 1936, there was filed in the office of the Clerk of said Court in said cause Defendant's Verified Motion for Leave to Withdraw Plea of Not Guilty and File Demurrer to Indictment, which said Motion for leave to withdraw plea of not guilty and file demurrer to indictment was and is in words and figures, the following, to-wit:

May 18, 36. 12 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—14452) * *

DEFENDANT'S VERIFIED MOTION FOR LEAVE TO WITHDRAW PLEA OF NOT GUILTY AND FILE DEMURRER TO INDICTMENT.

Max Sonzinsky, above named defendant, first being duly sworn, states that he pleaded not guilty to the indictment in this case at the time of his arraignment; that at the time of said arraignment affiant was not represented by counsel; that affiant was not represented by counsel in this case until Friday, May 15, 1936; that he is now represented by John M. Karns and H. J. Bandy; that said attorneys have advised affiant that it is their opinion that the statute on which this indictment is based is violative of affiant's consitutional rights and that it is invalid and unenforceable because it violates certain provisions of the constitution of the United States and invades spheres of legislation which are reserved to the states; that said attorneys have further advised affiant that it is vital to his defense that the question of the invalidity of said statute be presented to the Court by demurrer.

Wherefore, affiant respectfully petitions this Honorable Court for permission to withdraw his plea of not guilty in this case and to file a demurrer to the indictment.

Signed—MAX SONZ.

Subscribed and sworn to before me this 18th day of May, A. D. 1936.

Signed—LOTTIEBELLE SPRINGER,
Notary Public.

(Seal)

Endorsed: 14452 United States *vs.* Max Sonzinsky Motion for leave to withdraw plea of not guilty and file demurrer Filed May 18-1936 D. H. Reed, Clk.

13 And on the same day, to-wit: On the 18th day of May, A. D. 1936, there was filed in the office of the Clerk of said Court in said cause, Demurrer to Indictment, which said Demurrer to Indictment was and is in words and figures the following, to-wit:

14 IN THE DISTRICT COURT OF THE UNITED STATES. Filed May 1936.

* * (Caption—14452) * *

DEMURRER TO INDICTMENT.

Now comes Max Sonzinsky, above named defendant, by John M. Karns, and H. J. Bandy, his attorneys and says that the indictment in this case is not sufficient to require this defendant to plead thereto. And as reasons in support of this demurrer, this defendant alleges:

1. That the statute upon which this indictment is predicated, and each and every section thereof, is violative of the Constitution of the United States in that it exceeds the powers delegated to the United States Government, and invades the police power specifically reserved to the States.

2. That the statute upon which this indictment is predicated, although pretending or professing to be a revenue measure, is not a revenue measure, but is merely a police regulation, and is that respect it constitutes an unwarranted and unconstitutional exercise by the United States Government of police regulation of a purely intrastate matter and of a subject that is specifically reserved to the province of state legislation.

3. That the said statute is not a revenue measure and its enactment was not justified by the power of Congress to levy excise taxes.

15 4. The statute upon which this indictment is based has no reasonable relation to the taxing authority conferred by the constitution.

5. The statute is arbitrary and unreasonable, and is also confiscatory to the extent that its enforcement would be equivalent to the confiscation of the property of citizens without due process of law.

6. The excessive, exhorbitant and unreasonable taxes imposed by this statute, many times exceeding the value of the property to be taxed, shows that there was no intention on the part of Congress for this statute to realize revenue for the government, and that the Act was passed solely as a police measure.

7. That count one (1) of said indictment does not allege a violation of the said statute.

8. That count two (2) of said indictment does not allege a violation of the said statute.

9. That count three (3) of said indictment does not allege a violation of the said statute.

10. That count four (4) of said indictment is dupicitious and does not allege a violation of the said statute.

Wherefore, this defendant prays that he may be dismissed with his costs in this behalf most wrongfully sustained.

Signed—JOHN M. KARNS,
" —H. J. BANDY,
Attorneys for Defendant.

Endorsed: 14452 United States *vs.* Max Sonzinsky Demurrer to indictment. Filed May 18-1936 D. H. Reed, Clerk.

ed May 18, 36. 16 And on the same day to-wit: The 18th day of May, A. D. 1936, there was filed in said Court in said cause, a Verdict, which said Verdict was and is in the words and figures following, to-wit:

17 No. 14452.

We, the jury, find the defendant Max Sonzinsky, Guilty as charged in the 1st and 2nd counts of the indictment in this case, and Not guilty as charged in the ..... counts.

Signed—G. L. JAMES, *Foreman.*
" E. H. HAWKINS,
" JOSEPH DECKER,
" JOHN VALLOWE,
" PHILIP J. MAY,
" ARMIN L. FRIDRICHS,
" WM. REIFSCHNEIDER,
" HARMON SUMMERS,
" HENRY O. EVANS,
" CARL J. MANNLE,
" J. O. THROGMORTON,
" J. W. HARRINGTON.

Endorsed: 14452 United States *vs.* Max Sonzinsky Verdict Filed May 18 1936 D. H. Reed, Clerk.

18 And afterwards, to-wit: On the 21st day of May, A. D. 1936, the following further proceedings were had in said court in said cause, and entered or record, to-wit:

19 IN THE DISTRICT COURT OF THE UNITED STATES. Entered M 1936.

* * (Caption—14452) * *

Thursday, May 21st, 1936.

Present: Honorable Fred L. Wham, Judge.

Appearances:

Arthur Roe, United States Attorney, for plaintiff.

Defendant Max Sonzinsky in person and by John M. Karns and H. J. Bandy his attorneys.

Comes now the defendant by his said attorneys and files and presents to the court his motion for a new trial, and after hearing arguments thereon, said motion is by the court denied, to which ruling of the court the defendant by his attorneys then and there excepts.

And now comes the said defendant by his said attorneys and files and presents to the court motion in arrest of judgment, and after hearing the arguments of counsel thereon, it is ordered by the court that said motion be and it is hereby overruled, to which ruling of the court the defendant by his attorneys then and there excepts.

Whereupon, it is ordered by the court that the said Max Sonzinsky be committed to the custody of the Attorney General of the United States or his authorized representative and sentenced as follows:

First count—Eighteen months imprisonment in the United States Penitentiary at Leavenworth, Kansas, from this date.

Second count—Eighteen months imprisonment in the United States Penitentiary at Leavenworth, Kansas, from this date, and fined $500.00 to stand committed on fine; Jail sentences to run and be served Concurrently.

20 And on the same day, to-wit: On the 21st day of May A. D. 1936, there was filed in the office of the Clerk of said Court in said cause Motion for New Trial, which said Motion for New Trial, was and is in words and figures, the following, to-wit:

May 21, 36. 21 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—14452) * *

MOTION FOR NEW TRIAL.

Now comes Max Sonzinsky, above named defendant by John M. Karns and H. J. Bandy, his attorneys, and respectfully asks this Honorable Court to set aside the verdict of the jury in this case and to grant this defendant a new trial. As reasons in support of this motion, the defendant says:

1. The verdict is contrary to the law.
2. The verdict is contrary to the evidence.
3. The court erred in overruling defendant's demurrer to the indictment.
4. The court erred in denying defendant's request, made at the close of the Government's evidence and renewed at the close of all the evidence, for the jury to find the defendant not guilty.
5. The defendant was unfairly prejudiced by the improper or prejudicial argument of the United States Attorney, to wit,: "The purpose of the National Firearms Act is to prevent mass murders and incidents of that kind, that may happen."

22 6. The evidence failed to prove that the defendant was a dealer as defined by the Statute.

7. The evidence failed to disclose the person to whom the defendant should have issued an order in blank.
8. And for other good and sufficient reasons.

Signed—JOHN M. KARNS,
Attorney for Defendant,
604 Spivey Building,
East St. Louis, Illinois.
" H. J. BANDY,
Attorney for Defendant,
Hogan Building,
Granite City, Illinois.

Endorsed: 14452 United States *vs.* Max Sonzinsky Motion for New Trial Filed May 21-1936 D. H. Reed, Clerk.

23 And on the same day, to-wit: On the 21st day of May, A. D. 1936, there was filed in the office of the Clerk of said Court in said cause Motion in Arrest of Judgment, which said Motion in Arrest of Judgment, was and is in words and figures, the following, to-wit: Filed May 1936.

24 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—14452) * *

MOTION IN ARREST OF JUDGMENT.

Now comes Max Sonzinsky, the above named defendant, and moves the court to arrest and set aside the judgment in the above entitled case, and not to enter judgment therein upon the said verdict for the following reasons:

1. That the statute upon which the indictment in this case is predicated is invalid and unconstitutional, because, in enacting said statute, the Congress of the United States exercised a power not delegated to it by the Constitution, and invaded a right specifically reserved to the individual States.

2. Because the statute upon which this indictment is based, invades the special police powers specifically reserved to the individual States.

Signed—JOHN M. KARNS,
Spivey Bldg., E. St. Louis, Ill.
" H. J. BANDY,
Hogan Bldg, Granite City. Ill.
Attorneys for Appellant.

Endorsed: 14452 United States *vs.* Max Sonzinsky Motion in Arrest of Judgment Filed May 21-1936 D. H. Reed, Clerk.

Bill of Exceptions Filed June 18, 1936.

44 APPROVED NARRATIVE STATEMENT OF EVIDENCE.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

(Caption—14452)

Appearances:

For the Government:

Arthur Roe, United States Atty.
Grendel E. Bennett.
Joseph A. Troy.
Leonard Dunn.

For the Defendant:

John Karns.
Harold Bandy.

Now Be It Remembered that on the trial of this cause in the District Court of the United States of America for the Eastern District of Illinois, at the Federal Building, East St. Louis, Illinois, on this, to-wit: The 18th day of May, A. D. 1936, the same being one of the judicial days of this term, the Honorable Fred L. Wham, Judge presiding, and a jury, The Government, to sustain the issues on its behalf, offered the following evidence:

45 WESLEY LE GRAND, being first duly sworn on behalf of the Government, testified as follows:

Direct Examination by Mr. Bennett.

My name is Wesley LeGrand. I have lived at 463 North 25th Street all my life. I am twenty-seven years old. I am acquainted with John Dowling. I know defendant Max Sonzinsky. His place of business is about 453 Collinsville Avenue, East St. Louis, County of St. Clair, Illinois. On April 9th last John Dowling was with me. We went to Jew Max' store to buy a double barrel shot gun. No one else was with us. It was about 4:30 or 5 o'clock. We both went into the store and saw Jew Max. He showed us a 10 gauge gun and a couple of 12 gauge guns. It was a hardware store where they sold hot water heaters for automobiles, tools and

things carried in hardware stores, guns, light fixtures. I don't know whether he sells ammunition for guns. I think he had four double barrel shot guns. For this particular 12 gauge double barrel gun he wanted $8.00. He brought out another one for which he also wanted $8.00. He had a 10 gauge gun but I was not interested. He wanted $8.00 for the gun but it had a crack in the back of the stock. I offered him $6.00 but he did not take it. He asked me if I would be interested in a sawed-off pump gun, a Winchester. I told him I would take a look at it. He told Dowling and myself to step outside and sit in the machine and he would call us when it was ready in about five minutes. We went out and sat in the machine. Mr. Sonzinsky came to the door and motioned us to come in. The gun was unassembled, wrapped in
46 newspaper. He told me to look at it. I put the gun together, worked it a few times. It worked all right. He told me he wanted $10.00 for the gun. In my estimation a new gun of that type is worth around $35.00. I put the gun together. When Max called me in the gun was unassembled and wrapped in a newspaper tied with a string. I untied it. Dowling and I looked at it. I told him the gun was worth $10.00 all right, it was brand new. He guaranteed it to be in perfect order. I bought it.

Mr. Bennett: This will be government's exhibit "A".

This Government's exhibit "A" is the gun I bought and paid $10.00 for. Jew Max priced it at $10.00 and I paid him in his store on Collinsville Avenue around number 453, and John Dowling was with me. As far as I know it was in working condition. I never tried it out. Sonzinsky represented it to be in working condition. I went out, put it in my automobile and went home. I have not had any conversation with the defendant since that time last Monday morning. He told me here in the Federal Building that he wanted to see me.

Cross-Examination by Mr. Bandy.

I am unemployed. Was a clerk. I have an indictment for robbery against me. I did not offer to testify against Sonzinsky. I was arrested with Dowling. I have not been offered any clemency in return for testifying against this defendant. I talked to my lawyer about this case. Also
47 to Mr. Schaefer and a Federal man when I was caught with the gun. They did not make any promises to me. I spoke to the United States Attorney this morning. I did

not make any statement to him. He told me to tell the truth. I would say I have been in that store twice. I saw a young fellow in there. I don't know who he is. I met the defendant the day I went in to buy the gun. I have seen him in his store before. I cannot explain how I know it was the defendant's store. I don't know exactly how I would explain that. There was not any name on the window. I do not know who owns that store. It is right that I don't know but what the other man in there may have been the proprietor of the store. I have never seen any license issued to that store by the State. It was a sort of general store handling hardware, furniture and all sorts of things.

Redirect Examination by Mr. Bennett.

When he told us to go out and sit in the machine, he told the young fellow in there to go get the gun and bring it to him.

Mr. Bennett: I will ask that GOVERNMENT'S EXHIBIT "A" be introduced at this time.

The Court: It will be admitted.

Government's Exhibit "A" consists of one sawed-off Winchester pump shot gun that was identified by the witness Wesley LeGrand.

JOHN DOWLING, being first duly sworn on behalf of the Government, testified as follows:

Direct Examination by Mr. Bennett.

48 My name is John Dowling. I am thirty-three years of age, live at 813 Bond Avenue, East St. Louis. I am acquainted with Wesley LeGrand but not with Max Sonzinsky. I saw Max Sonzinsky the first time on the street. On the 9th of April I was with LeGrand. We went to the store at 453 Collinsville Avenue. When we went in, LeGrand went ten or fifteen feet back of me and talked to someone about a double barrel shot gun. I stood at the door where Max Sonzinsky was. Two or three shot guns were shown to LeGrand. Max was toward the front where I was. LeGrand didn't find any to suit him and someone called Mr. Sonzinsky. LeGrand came to me and said he had a pump gun he wanted to show him, and if we would walk to the car he would call when he had it ready. We went and sat in the car in

front of the door for three or four minutes, when Mr. Sinzinsky called us. When we went in he and LeGrand walked toward the back of the store, twenty or thirty feet. I was standing up toward the front of the store. I went back there. I think LeGrand called me back. They were taking a shot gun out of a package. They had it unwrapped laying on a newspaper it had been wrapped in. The gun was put together. LeGrand was working the gun. Government's Exhibit "A" looks like the gun. After it was put together, LeGrand asked Mr. Sonzinsky the price and the reply was ten dollars. If I remember right, LeGrand said he would take it, that was the close of the transaction. He wrapped it up and put it in the car and I went with him. I think the
49 son was in the store when the sawed-off shot gun was purchased. He was up toward the front of the store. He did not take any of the money. The money was paid to Max Sonzinsky. That store is in St. Clair County, State of Illinois.

Cross-Examination by Mr. Karns.

I don't know as I have talked to anyone about the case. Mr. Ackermann said something to me about it. I don't know just who the United States District Attorney is. I cannot say I have seen the gentlemen at the table. I was talking to Mr. Troy. I don't know if he is one of the United States District Attorneys. I don't know as I have a case pending against me in this court. I have been indicted in this court and was arraigned here last Monday. I could not say where it was to come up. It has not been dismissed as I know of. I have not had any promise that it would be dismissed. I am testifying voluntarily and telling the truth. I was never in trouble before the case came up before the City Court. I have not served two or three terms in the penitentiary. I did not testify before the Grand Jury.

Redirect Examination by Mr. Bennett.

Before Mr. Sonzinsky sold that gun there was no mention made of who owned it.

GILBERT HART, being first duly sworn on behalf of the Government, testified as follows:

Direct Examination by Mr. Bennett.

50 My name is Gilbert Hart. I live in St. Louis and I am a special agent of the Intelligence Bureau, Department of Internal Revenue of the United States Government, and have been since May, 1935. I have seen Government's Exhibit "A" before. To the best of my recollection its barrel is fifteen and seven-eighths inches long.

L. J. WAHL, being first duly sworn on behalf of the Government, testified as follows:

Direct Examination by Mr. Bennett.

My name is L. J. Wahl. I live in Springfield, Illinois. I am a clerk in the Internal Revenue Department and have been for seventeen years. I have charge of the registration of firearms in this State. We receive all applications for registration, all applications for special taxes from dealers and pawn-brokers and for the transfer of firearms. Max Sonzinsky is not registered in my office as a dealer in firearms. There is no one registered from 453 Collinsville Avenue, East St. Louis. Max Sonzinsky has not obtained application blanks for the transfer of sawed-off shot guns. Max Sonzinsky has not ever filed a certificate of registration with the Collector of Internal Revenue of this particular sawed-off shot gun, marked Government's Exhibit "A" or any sawed-off shot gun. This is the Eighth Internal Revenue District, and it includes St. Clair County.

WESLEY LE GRAND recalled as a witness for the Government, testified as follows:

Redirect Examination by Mr. Bennett.

51 Max Sonzinsky told me where the gun came from after I bought it. He said the gun belonged to Hickey, who had tried to hold up the detectives out there.

GILBERT HART recalled as a witness for the Government, testified as follows:

Redirect Examination by Mr. Roe.

I have made an accurate measurement of the length of the barrel of the sawed-off shot gun, marked Government's Exhibit "A". It is fifteen and five-eighths inches.

WESLEY LE GRAND recalled as a witness for the Government, testified as follows:

Redirect Examination by Mr. Roe.

I don't know whether this gun marked Government's Exhibit "A" is in the same condition as it was when purchased from Max Sonzinsky. Its appearance is the same. I didn't do anything with the gun.

Recross Examination by Mr. Karns.

The appearance of the gun is the same. I did not have it all the time since I purchased it from Max Sonzinsky. It has been in the possession of the United States Government.

The foregoing was all of the evidence offered on behalf of the Government.

Thereupon, at the close of the Government's evidence, the defendant, by his counsel, made the following request of the court:

52 "Now comes the defendant at the close of the Government's evidence and asks the Court to direct the jury to find him not guilty upon the entire indictment."

This request was denied by the court, except as to the fourth count of the indictment, to which ruling of the court the defendant, by his counsel, then and there excepted, whereupon the court directed the jury to return a verdict of not guilty as to the fourth count of the indictment.

Thereupon the defendant rested his case, and, at the conclusion of all the evidence, the defendant again requested the court to instruct the jury to find him not guilty upon all counts remaining in the indictment, being counts one, two and three.

This motion was denied, to which ruling of the court the defendant then and there excepted.

Thereupon the cause was argued for the Government by Assistant United States Attorney, Grendel E. Bennett. At the conclusion of this opening argument, in behalf of the Government, the defendant waived argument. During the course of Mr. Bennett's argument, the following occurred. Mr. Bennett said to the jury:

"Gentlemen of the jury—the purpose of the National Firearms Act is to prevent mass murders and incidents of that kind that may happen."

Thereupon, defendant, by Mr. Karns, one of his attorneys, objected in the following language:

"If the Court please, we object to the argument of the United States Attorney in which he says the purpose of the Act is to prevent mass murders and incidents of that kind that may happen."

53 The Court: Objection is sustained and the jury will disregard it. The question is, did he violate the statute.

At the conclusion of the argument, the court instructed the jury as follows:

"Gentlemen of the jury, this is a rather complicated statute from the standpoint of finding the applicable sections. I will try to present it so you will understand what the provisions of the statute are and apply the evidence you have heard from the witness stand to the provisions of the statute.

Before I explain more fully the purport of the indictment itself to the statutory provisions that apply in this case, I want to instruct you with reference to some general principles that apply in every criminal case that comes before a court of justice for trial.

You are instructed that the indictment in this case which forms the written charges the Government has made against this defendant is not in itself any evidence whatsoever of the truth of the charges contained in the indictment. It is merely the written charges which are filed for the purpose of presenting the charges clearly to the court and jury.

The defendant has pleaded not guilty to the charges contained in the various counts of the indictment and that plea of not guilty casts upon the Government the burden of proving those charges by evidence that convinces the minds of the jury of their truth beyond a reasonable doubt, before the jury is, under the law, entitled to return a verdict against the defendant.

54 The defendant comes into court with the presumption of innocence clothing him and protecting him against conviction without sufficient proof of his guilt and that presumption of innocence prevails until such time, if such time does come in the trial of the case, when the evidence produced by the Government in the trial of a case, overcomes the presumption of innocence and brings conviction to the minds of the jury of the truth of the charges and guilt of the defendant beyond a reasonable doubt.

Now by a reasonable doubt, gentlemen, is meant just such a doubt as the word implies, a doubt which appeals to your reason as being a reasonable doubt, a doubt which would cause you to hesitate before acting in a matter of serious import to yourself or someone near and dear to you. If you should believe from the evidence to a moral certainty the defendant is guilty, then you have no reasonable doubt as to his guilt and will be convinced to the extent the law requires and which would justify the return of a verdict of guilty.

If, after you consider all the evidence, you should have any doubt of defendant's guilt which appeals to your reason as being substantial in nature and which would cause you to hesitate and pause before acting in a matter that concerns yourself, then you should not find the defendant guilty.

55 If, on the other hand, after you have analyzed the evidence under the instructions of the Court your minds should be clear on the matter so that you can say you believe to a moral certainty the defendant is guilty as charged in the indictment, you should find him guilty.

When I refer to the indictment, I refer to each count, because each count constitutes a separate charge and when you consider his guilt or innocence you should consider it as to each count.

You have no way of arriving at the facts in the case except from the testimony of the witnesses testifying before you and from the exhibits introduced in evidence. It is your duty to weigh the testimony of the witnesses, their interest in the case, if any shown by the evidence, their manner of testifying, whether they testify frankly or with seeming lack of frankness and whether they had any foundation as shown by the evidence for their testimony and opportunity of knowing the facts to which they testify.

From all these various tests you will determine the weight you will give to the testimony of the respective witnesses. If you believe any witness has testified falsely in the case

and has done so wilfully and corruptly as to any material fact, then you may, if you see fit to do so, disregard all his testimony except in so far as you may believe that his testimony is corroborated by other credible testimony in the case.

This indictment that stands before you now consists of three counts, the fourth count having been withdrawn from the jury.

56 The first count charges the defendant with unlawfully, knowingly, fraudulently and feloniously carrying on the business of a dealer in firearms at 453 Collinsville Avenue, East St. Louis, Illinois, without having paid a special tax therefor as required by virtue of Section 1132a of the United States Code Annotated.

That you may understand that section, I will read to you the definition given in the statute, of firearms as it is used in the charge against the defendant contained in the first count of the indictment.

'The term "firearms" means a shot gun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.'

The only evidence here is with reference to a shot gun and so the part of the definition which would apply to the weapon in evidence should be a shot gun having a barrel of less than eighteen inches in length.

Now before the firearm produced in evidence here can become the means of evidence against the law, the jury must first find, beyond reasonable doubt, the firearm is a shot gun having a barrel of less than eighteen inches in length and that is the first question of fact for you to determine.

57 The statute further provides that the term "dealer" means any person not a manufacturer or importer engaged within the continental United States in the business of selling firearms. The term "dealer" shall include wholesalers, pawnbrokers and dealers in used firearms.

The word "firearms" as used in that section I have just read to you does not mean legitimate firearms, it means firearms such as are condemned in this statute. It means the dealer is engaged in dealing in firearms of unlawful character made unlawful by this statute. That includes sawed-off shot guns, machine guns, mufflers or silencers and so on. To

constitute a dealer, means one who is engaged in the business of handling that sort of firearms. It does not necessarily mean that he is engaged solely in that business. In other words, he might be engaged in the general hardware business dealing in legitimate firearms, all kinds of firearms, all kinds of hardware or any other commodities, but if as a part of that business he is engaged in the handling of unlawful firearms he becomes a dealer.

The question for you to determine is whether or not in this case, Max Sonzinsky the defendant here, did deal in or was a dealer in firearms, that is, unlawful firearms and you are to determine this question from all the facts and circumstances of the case here before you under the testimony which you have heard here from the witness stand.

If you should believe that this sale of the firearm in question here,—if you believe Max Sonzinsky did sell this fire-
arm—and if you should believe that sale was a single
58 incident and that he had no other business of that character, then you would not be authorized, the way this statute is drawn, to find him guilty of being a dealer contrary to the provisions of the statute, but if under the circumstances of this case, you should believe this is not a sole transaction but this is a transaction which is similar to other transactions of the same kind he is carrying on there in connection with the hardware business in that place; in other words, if you believe part of that business was the business of dealing in unlawful firearms such as are held unlawful in this statute, then you should find he is a dealer as described in the statute. I say if you find him to be a dealer you must reach that conclusion from the evidence and the circumstances of the case as shown by the evidence, and thus determine whether or not he is a dealer in firearms such as I have explained to you.

If you find he is a dealer in firearms as condemned by this statute, the next question would be, has he paid the tax as required to be paid by dealers in unlawful firearms.

Section 1132a provides this: "Within fifteen days after the thirtieth day after June 26, 1934, or upon first engaging in business and thereafter on or before the first day of July of each year, every importer, manufacturer and dealer in firearms shall register with the collector of internal revenue for each district wherein such business is to be carried on in his name or style, principal place of business and places of business in such district, and pay a special tax at the fol-

lowing rates: Importers or manufacturers, $500 a year;
59 dealers, other than pawnbrokers $200 a year; pawnbrokers $300 a year. Where the tax is payable on the first day of July in any year it shall be computed for one year; where the tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability to the tax accrued to the first day of July following."

In other words, if you find beyond a reasonable doubt from the evidence in this case, Max Sonzinsky was at the time of the transaction here in question, a dealer in firearms unlawful in character as described in this statute, then the next question would be, did he pay the tax, and if you find him a dealer and that he did not pay the tax, then you would find him guilty under this first count.

On the other hand, if you fail to find, beyond a reasonable doubt, that he is a dealer, of course that ends the first count and you should find him not guilty on that count.

If he is a dealer and has paid the tax that would end that particular count and you should find him not guilty on the first count.

If you find he is a dealer and has not paid the tax, then you would find him guilty on the first count.

The second count of the indictment charges the defendant with unlawfully, knowingly and feloniously receiving and having in his possession a certain firearm, to-wit: One
60 sawed-off shot gun which said firearm had come into his possession, not in pursuance of a written order from Max Sonzinsky on application upon a blank in duplicate issued by the Commissioner of Internal Revenue.

Now that count is based upon the following provision of the statute. I note the charge is, he did receive and have in his possession this firearm. The statute provides it shall be unlawful for any person to receive and possess any firearm which has at any time been transferred in violation of section 1132b or 1132c. The particular charge here is, he had possession of it and that it came into his possession not in pursuance of a written order.

Section 1132c, paragraph "a" provides, "It shall be unlawful for any person to transfer a firearm except in pursuance of a written order from the person seeking to obtain such article, on an application form issued in blank in duplicate for that purpose by the Commissioner. Such order shall identify the applicant by such means of identification as may

be prescribed by regulations under sections 1132 to 1132q."
That is the applicable section. In other words, it is charged he received the gun, not in pursuance of an order issued to him by the commissioner authorizing him to receive it in accordance with the terms of the statute I have just read to you. Under that section, if you should believe that he has had the gun in his possession, being a sawed-off shot gun with a fifteen and seven-eighths inch barrel and that it came into his possession without him having an order issued
61 to him for the purpose of obtaining a gun of that kind by the Commissioner of Internal Revenue, then that would be an unlawful receipt or receiving of the firearm.

The third count charges that Max Sonzinsky did unlawfully, knowingly and feloniously possess a certain firearm, to-wit: A sawed-off shot gun with a barrel fifteen and seven-eighths inches in length, which firearm had not theretofore been registered with the Collector of Internal Revenue at Springfield, Illinois as provided by law.

The statute provides that within sixty days after the thirtieth day after June 26, 1934, every person possessing a firearm shall register, with the collector of internal revenue in the district in which he resides, the number or other mark identifying such firearm, together with his name, address, place where such firearm is usually kept, and place of business or employment, and, if such person is other than a natural person, the name and home address of an executive officer thereof; Provided, That no person shall be required to register under this section with respect to any firearm acquired after the thirtieth day after June 26, 1934, and in conformity with the provisions of sections 1132 to 1132q.

Count three therefore gentlemen, would apply to a firearm which had been in the possession of a defendant prior to thirty days after June 26, 1934. If he had a gun in his possession at the time the law went into effect, or thirty days thereafter, he would be required to register that gun with
62 the collector of internal revenue in the district in which he resides, that would be the Collector at Springfield, Illinois, in this case, but if he acquired the gun after that time, then the only way in which he could lawfully acquire it would be through application blanks signed by him on blanks issued by the Commissioner of Internal Revenue and if he acquired it without those blanks, then it would be an unlawful acquirement, acquisition or receiving and transferring to him of the gun.

Before you can find the defendant guilty here on either of these counts you will have to determine from the evidence whether he had the gun before the thirtieth day after June 26, 1934, or whether he received it after that time. If he received the gun after that time, then the only way he could receive and possess it lawfully would be through having the blanks issued to him from the collector of Internal Revenue and a procurement and possession of it on the authority of those blanks.

Now then, the statute provides further that whenever on trial for a violation of section 1132e the defendant is shown to have or to have had possession of such firearm at any time after such period of sixty days, that is, sixty days after June 26, 1934, without having registered as required by this section, such possession shall create a presumption that such firearm came into the possession of the defendant subsequent to the thirtieth day after June 26, 1934, but this presumption shall not be conclusive.

The only evidence here as to any possession of Max Sonzinsky of the gun here in question is the possession which
63 he had on April 9, 1936, which is of course more than sixty days after June 26, 1934 and that is all the evidence you have to go on so far as I remember that evidence as to when he came into possession of it.

Now that being the evidence in the case, that he then had possession of it, and you have no other evidence as to when he came into possession of it, then this presumption which is created by statute will go into effect which presumption is he came into possession of it subsequent to or later than the thirtieth day after June 26, 1934. If he did come into possession of it after that time, if you find from the evidence that he came into possession of it after that time and you find further that he had possession of it not in pursuance of a written order from Max Sonzinsky on blank issued by the Commissioner of Internal Revenue, that he did not receive it under the authority of such blank, then he would be guilty under the second count of the indictment.

As I see the evidence in this case, I don't see how there can be any evidence of his having had it prior to the time this statute went into effect, or thirty days or sixty days thereafter.

I think I will have to instruct you to return a verdict for the defendant as to the third count of the indictment also,

therefore the defendant will stand before you charged with the first count of the indictment and the second count.

The first count charging him with being a dealer in fire-
arms without having paid a special tax as required of a
64 dealer under the statute, and the second count charg-
ing him with having received and having in his possession this firearm which did not come into his possession pursuant to an order on a blank issued by the Commissioner of Internal Revenue. As I stated to you before if you believe from the evidence he had possession of this gun on the 9th of April, 1936, that is the only date I remember as far as the evidence is concerned that testified about here in the case; then there is the presumption of law he did receive it after thirty days subsequent to June 26, 1934, and he would be required to have received it pursuant to an order made up on a blank issued by the Commissioner of Internal Revenue.

So the case will go to you on the first and second counts under these instructions.

I hope I have made it clear. It is a rather complicated statute and it has been rather difficult for me to find the particular sections that apply to the particular counts of the indictment. I have read them to you.

No exceptions for the Government or defendant.

You will keep it in mind gentlemen, it is the first and second count your verdict is to be based on, the third and fourth counts being withdrawn from your consideration.

Mr. Bandy: I would like for Your Honor to inform the jury that your instructions as to counts three and four do not indicate any opinion on your part as to counts one and two.

The Court: That is correct gentlemen, and you are so instructed.

You will now retire to your jury room and select a
65 foreman, consider the evidence, examine the exhibit, and
the charges in the indictment under the instructions of the court, and when you have reached a verdict your foreman will sign the verdict and each juror will sign following the foreman's name.

Two forms of verdict have been prepared for you. In case you find the defendant not guilty, the form to use will be, "We, the jury, find the defendant not guilty."

If you find him guilty as to both the first and second counts, then you would say, "We, the jury, find Max Sonzinsky guilty as to the first and second counts in this case."

If you find him guilty on one count and not guilty on the

other then your verdict would be, "We the jury, find Max Sonzinsky guilty on the first count and not guilty on the second count or vice versa.

You may take the indictment and the exhibit and retire to consider of your verdict.

66 And for as much as the matters and things hereinbefore do not otherwise appear of record, the defendant tender this, his bill of exceptions, and prays that the same may be signed and sealed by the Judge of this Court, pursuant to the statute made and provided, which is accordingly done this 18th day of June, A. D. 1936.

Presented to me in open Court.

FRED L. WHAM,
Judge of the United States District Court for the Eastern District of Illinois.

O.K. ARTHUR ROE,
U. S. Attorney
by JOSEPH A. TROY, JR.
O.K. JOHN M. KARNS
HAROLD J. BANDY.

Endorsed: Filed Jun 18, 1936. D. H. Reed, Clerk.

May 21, 36. 25 And on the same day, to-wit: On the 21st day of May, A. D. 1936, there was filed in the office of the Clerk of said Court in said Cause, Notice of Appeal, which said Notice of Appeal, was and is in words and figures, the following, to-wit:

26 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—14452) * *

NOTICE OF APPEAL.

Max Sonzinsky, the above named defendant, (appellant), by John M. Karns and H. J. Bandy, his attorneys, herewith serves notice that he will appeal from the judgment in the above entitled case. The appeal will be taken to the United States Circuit Court of Appeals for the Seventh Circuit. The title of this case upon appeal will be, United States of America, Appellee, *vs.* Max Sonzinsky, Appellant. The address of appellant is 453a Collinsville Avenue, in the City of East St. Louis, Illinois. The address of John M. Karns, one of appellant's attorneys, is Spivey Building, East St. Louis,

Illinois. The address of H. J. Bandy, the other of appellant's attorneys, is Hogan Building, Granite City, Illinois. The judgment in this case was rendered upon a jury verdict on May 21, A. D. 1936.

Appellant was indicted in an indictment consisting of four counts for an alleged violation of an Act of Congress entitled "Firearms", enacted June 26, 1934, and appearing in U. S. C. A. 26, Sections 1132 to 1132q, respectively. The court directed a verdict of not guilty upon counts three (3) and four (4), and the case was submitted to the jury upon counts one (1) and two (2) of the indictment. The jury found the defendant guilty upon both counts one and two.

27 Count one charges that the defendant, on April 9, A. D. 1936, in the City of East St. Louis, Illinois, and within the Eighth Internal Collection District of Illinois, did unlawfully, knowingly, fraudulently and feloniously carry on the business of a dealer in firearms at 453 Collinsville Avenue, East St. Louis, Illinois, without having paid the special tax therefor, as required by section 1132a of said Act.

Count two of the said indictment charges that the defendant, on said April 9, 1936, in the said City of East St. Louis, Illinois, unlawfully, knowingly and feloniously received and had in his possession a certain firearm, to-wit One (1) sawed-off shot gun with a fifteen and seven-eighths (15 7/8) inch barrel, which had come into his possession not in pursuance of a written order from the said Max Sonzinsky on application upon a blank, in duplicate, issued by the Commissioners of Internal Revenue.

The sentence imposed by the court was

Appellant is not at liberty on bond, and is at present confined at

This appeal is prosecuted upon the following grounds:

1. That the Firearms Act upon which this prosecution is based, is unconstitutional, in that it invades the police powers that are specifically reserved to the States.

2. The Firearms Act on which this indictment and prosecution are predicated, is unconstitutional because, in enacting said statute, Congress went beyond the powers delegated to it by the Constitution, and invaded the police powers specifically reserved to the individual States.

28 3. This Firearms Statute, while pretending to be a revenue measure, is in reality a police measure.

4. The statute, upon which this indictment is based, has no reasonable relation to the taxing authority conferred upon Congress by the Constitution.

5. The said Firearms Statute is arbitrary and unreasonable, and is also confiscatory. Its enforcement would be equivelant to the confiscation of the property of citizens without due process of law.

6. The excessive, exorbitant and unreasonable taxes imposed by this statute, many times exceeding the value of the property to be taxed, shows that there was no intention on the part of Congress for this statute to realize revenue for the Government, and that the Act was passed solely as a police measure.

7. That Count one of said indictment does not allege a violation of said statute.

8. That count two of said indictment does not allege a violation of said statute.

9. Because of inflammatory, prejudicial and improper argument made by the United States Attorney, in his argument to the jury, in which he said to the jury this, or this in substance: "The purpose of the National Firearms Act is to prevent mass murders and incidents of that kind." Although defendant's objection was sustained, the prejudicial effect of the statement could not be eradicated from the minds of the jurors.

10. The foregoing improper statement of the United States Attorney constituted an admission by the prosecutor that the said statute is a police measure and not a revenue act.

11. The evidence failed to prove that the defendant was a dealer within the provisions of this statute.

29 12. The evidence failed to prove that the alleged offense occurred within the Eighth Internal Collection District of Illinois.

13. The evidence fails to prove the identity of the person from whom the defendant is alleged to have obtained possession of the firearm described in the second count of the indictment.

14. The second count fails to allege, and the evidence fails to prove to whom the defendant should have given an application upon a blank, in duplicate, issued by the Commissioners of Internal Revenue. In failing either to allege the name of such person, or that he was to the Grand Jurors unknown, the said count omitted a necessary and vital allegation.

15. The evidence fails to prove the defendant guilty under either count of the indictment.

16. The court erred in refusing the request of the defend-

ant for a directed verdict of not guilty, which request was made at the close of the Government's evidence, and renewed at the close of all of the evidence.

17. The court erred in overruling the defendant's demurrer to the indictment, and each count thereof.

Signed—JOHN M. KARNS,
Spivey Building,
East St. Louis, Illinois.
Signed—H. J. BANDY,
Hogan Building,
Granite City, Illinois.
Attorneys for Appellant.

Received copy of notice of appeal this 21st day of May, 1936.

Signed—ARTHUR ROE,
U. S. Atty.
By " —GRENDEL F. BENNETT,
Asst. U. S. Atty.

Endorsed: 14452 United States *vs.* Max Sonzinsky Notice of appeal & acknowledgment Filed May 21 1936 D. H. Reed, Clerk.

67 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—14452) * *

ASSIGNMENT OF ERRORS.

Now comes Max Sonzinsky, the above-named appellant, by John M. Karns and Harold J. Bandy, his attorneys, and says that there was manifest error committed in the trial of the above-entitled cause, for which the judgment in said cause should be vacated and set aside, and of said errors, appellant assigns the following:

1. That the statute under which this appellant was indicted, prosecuted and convicted, is unconstitutional and void in that it relates to a subject matter that is confined to the police powers of the individual states, and that is not delegated to the United States Government.

2. Because the Trial Court erred in overruling this appellant's demurrer to the indictment. The said demurrer alleged that the statute upon which the indictment is based
68 is unconstitutional and void for the reason set forth in the first assignment hereof.

3. The court erred in refusing to give to the jury an in-

struction to find this appellant not guilty, which instruction was first requested at the close of the Government's evidence, and was renewed at the close of all the evidence.

4. Because the evidence offered by the Government at the trial of this cause does not prove this defendant guilty of the charges contained in counts one and two of the indictment.

Wherefore, this appellant prays that the judgment of the United States District Court in this cause should be reversed and set at naught.

JOHN M. KARNS,
604 Spivey Building,
East St. Louis, Illinois.
HAROLD J. BANDY,
Hogan Building,
Granite City, Illinois.
Attorneys for Appellant.

d May 21, 1936. 30 And on the same day, to-wit: On the 21st day of May, A. D. 1936, there was filed in the office of the Clerk of said Court in said cause, Motion for Supersedeas, which said Motion for Supersedeas was and is in words and figures, the following, to-wit:

31 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—14452) * *

Now comes the said Max Sonzinsky, defendant in the above entitled cause, by John M. Karns and H. J. Bandy, his attorneys, and moves and prays the court that the appeal granted in this cause shall act as a supersedeas, staying the execution of judgment entered herein, and that the said defendant be admitted to bail pending the determination of said appeal.

Signed—JOHN M. KARNS,
Attorney for Defendant,
604 Spivey Building,
East St. Louis, Illinois.
" H. J. BANDY,
Attorney for Defendant,
Hogan Building,
Granite City, Illinois.

Endorsed: 14452 United States *vs.* Max Sonzinsky Motion for Supersedeas Filed May 21, 1936 D. H. Reed, Clerk.

32 And on the same day, to-wit: On the 21st day of May, A. D. 1936, the following further proceedings were had in said court in said cause and entered of record, to-wit: Entered May 1936.

33 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—14452) * *

ORDER FOR SUPERSEDEAS.

Max Sonzinsky, the above named appellant, having filed his notice of appeal with the Clerk of the Court, and having served a copy of same upon the United States Attorney, and also having filed his petition asking that the court order the said appeal to operate as a supersedeas, suspending the execution of the judgment during the pendency of the appeal, and the court being now fully advised in the premises, it is ordered, adjudged and decreed that the said appeal shall operate as a supersedeas, and that appellant shall be admitted to bail upon his entering into bond in the sum of Five Thousand ($5,000.00) Dollars, with a good and sufficient surety to be approved by the Clerk of this Court, the said bond to be conditioned in accordance with law.

Dated this 21st day of May, A. D. 1936.

Signed—FRED L. WHAM,
Judge of the United States District Court for the Eastern District of Illinois.

Endorsed: 14452 United States *vs.* Max Sonzinsky Order allowing Supersedeas Filed and Entered May 21, 1936 D. H. Reed, Clerk.

34 And on the same day, to-wit: On the 21st day of May, A. D. 1936, there was filed in the office of the Clerk of said Court in said cause, Supersedeas Recognizance, which said Supersedeas Recognizance, was and is in words and figures, the following, to-wit:

d May 21, 936.

35 UNITED STATES DISTRICT COURT.

* * (Caption—14452) * *

Know All Men By These Presents, that we Max Sonzinsky, 453a Collinsville, E. St. Louis, as principal, and Tom Carten, 435 N. 10th St., E. St. Louis and Harry Sonz, 1517 N. 54th, E. St. Louis as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000.00), for the payment of which to the said United States of America well and truly to be made, we and each of us, do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of May, A. D. 1936.

Whereas, lately, at a session of the United States District Court for the Eastern District of Illinois (E. St. Louis), in a suit pending in said Court, at East St. Louis between the United States of America as complainant and Max Sonzinsky as defendant, a Judgment was rendered against said Max Sonzinsky defendant, on the 21st day of May, 1936, sentencing said Max Sonzinsky to be imprisoned for a term of Eighteen months in the United States Penitentiary at Leavenworth, Kansas and also to pay a fine of Five Hundred Dollars ($500.00), and costs of prosecution, and the said defendant Max Sonzinsky having obtained from said Court an order for supersedeas on appeal and filed a copy thereof in the Clerk's office of said Court to reverse the Judgment is the aforesaid suit, and a notice of appeal directed to the United States of America, citing and admonishing it to appear at the United States Circuit Court of Appeals for the 7th Circuit; and whereas the said defendant Max Sonzinsky desires said order to operate as a supersedeas and stay of execution and to be admitted to bail and to be permitted to be and remain at large on bail pending said proceedings in error to the said Circuit Court of Appeals.

Now, The Condition Of The Above Obligation Is Such that if the said Max Sonzinsky shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall also personally be and appear here in this Court from day to day during the present term and from term to term of this Court

thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the said U. S. Circuit Court of Appeals and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue.

Signed—MAX SONZ (Seal)
" TOM CARTEN (Seal)
" HARRY SONZ (Seal)

Taken and acknowledged before me at E. St. Louis this 21st day of May, A. D. 1936.

Sgd—V. D. RODGERS,
Deputy Clerk, United States District Court.

Now, The Condition Of The Above Obligation Is Such that if the said Max Sonzinsky shall prosecute his writ of error to effect, and if he fail to make his plea good, shall answer and pay said fine and all damages and costs and shall be also personally be and appear here in this Court from day to day during the present term and from term to term of this Court thereafter, pending said proceedings in error, and shall surrender himself to the United States Marshal of this district and be present to abide the Judgment of this Court or that of the said U. S. Circuit Court of Appeals and serve his sentence and not depart the jurisdiction of this Court without leave thereof, then this obligation to be void; otherwise to remain in full force and virtue

Signed MAX SONZ (Seal)
" TOM CARTEN (Seal)
" HARRY SONZ (Seal)

Taken and acknowledged before me at E. St. Louis, this 21st day of May, A. D. 1936.

Signed—V. D. RODGERS,
Deputy Clerk, United States District Court.

Approved this 21st day of April, A. D. 1936.

Signed—FRED L. WHAM,
District Judge.

Endorsed: United States District Court * * (Caption—14452) * * Supersedeas Recognizance Filed May 21 1936 D. H. Reed, Clerk.

36 Justification of Bail

UNITED STATES OF AMERICA

* * (Caption—14452) * *

SUPERSEDEAS BOND.

Bond, $5000.00.

HARRY SONZ, being duly sworn as to his sufficiency as bail in the above-entitled proceedings, says as follows, to-wit:

I reside at 1517 N. 54th St., E. St. Louis.

My occupation is Merchant.

I own in fee simple, and in my own name and right, the following real estate, situate in the said district: Part of lot #13 Block "A" of Platted town of E. St. Louis, worth $6000.00 and the deed conveying the same to me has been duly recorded.

The said real estate is free and clear of all liens and incumbrances whatever. none

I purchased this property in March 7-1936 from Clark Real Estate Co. and paid for it at that time $4000.00. I am not surety on any other bonds, except none

The defendant is my father

I offer myself as bailor voluntary

I am to receive $ no for becoming surety on this bond, which amount is to be paid me by no when bond is approved.

I have not been indemnified no

The above property is not my homestead.

No persons have any interest in the above property which is not disclosed by the records.

There are no foreclosure proceedings now pending against me.

There are no negotiations pending for the sale of the above-described real estate.

There is no judgment in force against me or my property in any court of record within the said district. none

I am worth at least 7000.00 dollars over and above all my liabilities.

I have not acquired, taken, or received the title to the said real estate, or any part thereof, with any design or intention of making any fraudulent or deceptive showing of my sufficiency as bail in this behalf, or otherwise than in good faith,

and with the intention to holding and using the said real estate as my own.

(Signed) HARRY SONZ.

Subscribed and sworn to before me this 21st day of May, A. D. 1936.

Signed—V. D. RODGERS,
Deputy Clerk.

(Seal)

37 Justification of Bail

UNITED STATES OF AMERICA

* * (Caption—14452) * *

SUPERSEDEAS BOND.

Bond, $5000.00.

TOM CARTEN, being duly sworn as to his sufficiency as bail in the above-entitled proceedings, says as follows, to wit:

I reside at 435 N. 10th, E. St. Louis, Ill.

My occupation is Merchant.

I own in fee simple, and in my own name and right, the following real estate, situate in the said district: Block 11 lot 1 Winstanley Add. to E. St. Louis 4000.00, worth $4000.00 and the deed conveying the same to me has been duly recorded.

The said real estate is free and clear of all liens and incumbrances whatever. nothing

I purchased this property in 1924 from E. E. Clark, E. St. Louis and paid for it at that time $3500.00. I am not surety on any other bonds, except none

I have known the defendant, Max Sonzinsky, for 20 years.

I offer myself as bailor at the request of Dfts. Son.

I am to receive $ no pay for becoming surety on this bond, which amount is to be paid me by no when bond is approved.

I have not been indemnified no

The above property as described is not my homestead.

No persons have any interest in the above property which is not disclosed by the records.

There are no foreclosure proceedings now pending against me.

There are no negotiations pending for the sale of the above-described real estate.

There is no judgment in force against me or my property in any court of record within the said district. none

I am worth at least 25,000.00 dollars over and above all my liabilities.

I have not acquired, taken, or received the title to the said real estate, or any part thereof, with any design or intention of making any fraudulent or deceptive showing of my sufficiency as bail in this behalf, or otherwise than in good faith, and with the intention to holding and using the said real estate as my own.

TOM CARTEN.

Subscribed and sworn to before me this 21st day of May, A. D. 1936.

Signed—V. D. RODGERS,
Deputy Clerk.

(Seal)

(Endorsed) Filed May 21 1936 D. H. Reed, Clerk.

d May 21, 936. 38 And on the same day, to-wit: On the 21st day of May, A. D. 1936, the Clerk of said Court prepared Clerk's Statement of Docket Entries under Rule IV, in said cause, and forwarded same to the United States Circuit Court of Appeals, which said Clerk's Statement of Docket Entries under Rule IV was and is in words and figures, the following, to-wit:

39 FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES FORWARDED UNDER RULE IV.

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals)

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Illinois.

United States of America *vs.* Max Sonzinsky	No. 14452.

1. Indictment for Violation National Firearms Act, filed May 5, 1936.
2. Arraignment May 11-1936.

3. Plea to indictment Not guilty 5/11/36 withdrawn by leave of Court 5/18/36 and Demurrer filed—Demurrer overruled and plea of not guilty entered 5/18/36.
4. Motion to withdraw plea of guilty denied.
5. Trial by jury, May 18, 1936.
6. Verdict and finding of guilt to 1st & 2nd counts (court directed not guilty to 3rd and 4th counts) May 18, 1936.
7. Judgment—(with terms of sentence) 18 Mo. U. S. Pen. Leavenworth and fined $500.00 and stand committed entered May 21, 1936.
8. Notice of appeal filed May 21-1936.

Date May 21, 1936.

Attest (Signed) D. H. REED,
Clerk.

N. B.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules VII, VIII, and IX.

(Endorsed) 14452 U. S. vs. Max Sonzinsky copy statement of docket entries under rule IV. Mailed Clerk U. S. Circuit court appeals 5/21/36 D. H. Reed, Clerk.

40 And afterwards, to-wit: On the 22nd day of May, A. D. 1936, there was filed in the office of the Clerk of said Court in said Cause Praecipe for Record, which said Praecipe for Record, was and is in words and figures, the following, to-wit: Filed May 1936.

41 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—14452) * *

PRAECIPE FOR RECORD.

To the Honorable Douglas H. Reed, Clerk of the United States District Court for the Eastern District of Illinois:

Whereas, a notice of appeal has been filed with the Clerk of this Court by Max Sonzinsky, the above named appellant, as a preliminary step to appealing from the judgment of this court to the United States Circuit Court of Appeals for the Seventh Circuit, will you, therefore, please prepare a certified transcript of all the records, proceedings, papers and docu-

ments in said cause, to be transmitted to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, in manner and form and within the time as
42 provided by law; and will you please include therein the following;

1. The indictment.
2. The defendant's demurrer to the indictment.
3. The defendant's plea.
4. The verdict of the jury.
5. The defendant's motion for new trial.
6. The defendant's motion in arrest of judgment.
7. All orders entered by the court throughout the said proceedings.
8. The judgment and sentence.
9. The notice of appeal.
10. The petition for supersedeas.
11. The order allowing supersedeas and fixing bond.
12. The bond.
13. Defendant's exceptions to all the various orders, rulings and judgment.
14. A copy of this praecipe.
15. Your certificate certifying to the correctness of such transcript.

JOHN M. KARNS,
604 Spivey Building,
East St. Louis, Illinois.
H. J. BANDY,
Hogan Building,
Granite City, Illinois,
Attorneys for Appellant.

43 Received a true and correct copy of the above praecipe this 22nd day of May, A. D. 1936, and I consent that the transcript of the record may be prepared as therein specified.

(Signed) ARTHUR ROE,
United States Attorney for the Eastern District of Illinois.

(Endorsed) Filed May 22 1936 D. H. Reed, Clerk.

69 United States of America } ss.
Eastern District of Illinois }

I, D. H. Reed, Clerk of the United States District Court in and for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify that the annexed and foregoing is a true and full Transcript of the record and proceedings against Max Sonzinsky, in a cause entitled The United States *vs.* Max Sonzinsky, Criminal No. 14452, as fully as the same appear from the originals now on file and of record in my office as Clerk of said Court, and made in accordance with the directions of the presiding Judge of said cause.

I further certify that the condensed statement of evidence included in said transcript is the original statement of evidence as filed in said cause, and that the assignment of errors is the original assignment of errors filed in said cause.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at East St. Louis this 19th day of June, A. D. 1936.

D. H. Reed,
Clerk.

(Seal)

By Helen V. Hunt,
Deputy Clerk.

[fol. 42] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room in the City of Chicago, in said Seventh Circuit on the first day of October, 1935, of the October Term on the year of our Lord One Thousand Nine Hundred and Thirty-Five, and of our Independence the One Hundred and Sixtieth.

5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Eastern District of Illinois

And on, to-wit: On the twenty-eighth day of May, 1936, there was filed in the office of the Clerk of this court a Notice of Appeal, which said Notice of Appeal is in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE EASTERN DISTRICT OF ILLINOIS, MAY TERM, A. D. 1936

No. 14452

UNITED STATES OF AMERICA, Plaintiff,

vs.

MAX SONZINSKY, Defendant

Notice of Appeal

Max Sonzinsky, the above named defendant, (appellant), by John M. Karns and H. J. Bandy, his attorneys, herewith serves notice that he will appeal from the judgment in the above entitled case. The appeal will be taken to the United States Circuit Court of Appeals for the Seventh Circuit. [fol. 43] The title of this case upon appeal will be, United

States of America, Appellee, vs. Max Sonzinsky, Appellant. The address of appellant is 453 Collinsville Avenue, in the City of East St. Louis, Illinois. The address of John M. Karns, one of appellant's attorneys, is Spivey Building, East St. Louis, Illinois. The address of H. J. Bandy, the other of appellant's attorneys, is Hogan Building, Granite City, Illinois. The judgment in this case was rendered upon a jury verdict on May 21, A. D. 1936.

Appellant was indicted in an indictment consisting of four counts of an alleged violation of an Act of Congress entitled "Firearms", enacted June 26, 1934, and appearing in U. S. C. A. 26, Sections 1132 to 1132q, respectively. The court directed a verdict of not guilty upon counts three (3) and four (4), and the case was submitted to the jury upon counts one (1) and two (2) of the indictment. The jury found the defendant guilty upon both counts one and two.

Count one charges that the defendant, on April 9, A. D. 1936, in the City of East St. Louis, Illinois, and within the Eighth Internal Collection District of Illinois, did unlawfully, knowingly, fraudulently and feloniously carry on the business of a dealer in firearms at 453 Collinsville Avenue, East St. Louis, Illinois, without having paid the special tax therefor, as required by section 1132a of said Act.

Count two of the said indictment charges that the defendant, on said April 9, 1936, in the said City of East St. Louis, Illinois, unlawfully, knowingly and feloniously received and had in his possession a certain firearm, to-wit: One (1) sawed-off shot gun with a fifteen and seven-eighth (15 7/8) inch barrel, which had come into his possession not in pursuance of a written order from the said Max Sonzinsky on application upon a blank, in duplicate, issued by the Commissioners of Internal Revenue.

[fol. 44] The sentence imposed by the court was

Appellant is not at liberty on bond, and is at present confined at

This appeal is prosecuted upon the following grounds:

1. That the Firearms Act upon which this prosecution is based, is unconstitutional, in that it invades the police powers that are specifically reserved to the States.

2. The Firearms Act on which this indictment and prosecution are predicated, is unconstitutional because, in enacting said statute, Congress went beyond the powers dele-

gated to it by the Constitution, and invaded the police powers specifically reserved to the individual States.

3. This Firearms Statute, while pretending to be a revenue measure, is in reality a police measure.

4. The statute upon which this indictment is based, has no reasonable relation to the taxing authority conferring upon Congress by the Constitution.

5. The said Firearms Statute is arbitrary and unreasonable, and is also confiscatory. Its enforcement would be equivalent to the confiscation of the property of citizens without due process of law.

6. The excessive, exorbitant and unreasonable taxes imposed by this statute, many times exceeding the value of the property to be taxed, shows that there was no intention on the part of Congress for this statute to realize revenue for the Government, and that the Act was passed solely as a police measure.

7. That Count one of said indictment does not allege a violation of said statute.

8. That Count two of said indictment does not allege a violation of said statute.

9. Because of inflammatory, prejudicial and improper argument made by the United States Attorney, in his argument to the jury, in which he said to the jury this, or this is in substance: "The purpose of the National Firearms Act is to prevent mass murders and incidents of that kind." [fol. 45] Although defendant's objection was sustained, the prejudicial effect of the statement could not be eradicated from the minds of the jurors.

10. The foregoing improper statement of the United States Attorney constituted an admission by the prosecutor that the said statute is a police measure and not a revenue act.

11. The evidence failed to prove that the defendant was a dealer within the provisions of this statute.

12. The evidence failed to prove that the alleged offense occurred within the Eighth Internal Collection District of Illinois.

13. The evidence fails to prove the identity of the persons from whom the defendant is alleged to have obtained possession of the firearm described in the second count of the indictment.

14. The second count fails to allege, and the evidence fails to prove to whom the defendant should have given an application upon a blank, in duplicate, issued by the Commissioners of Internal Revenue. In failing either to allege the name of such person, or that he was to the Grand Jurors unknown, the said count omitted a necessary and vital allegation.

15. The evidence fails to prove the defendant guilty under either count of the indictment.

16. The court erred in refusing the request of the defendant for a directed verdict of not guilty, which request was made at the close of the Government's evidence, and renewed at the close of all of the evidence.

17. The court erred in overruling the defendant's demurrer to the indictment, and each count thereof.

John M. Karns, Spivey Building, East St. Louis, Illinois; H. J. Bandy, Hogan Bldg. Granite City, Illinois, Attorneys for Appellant.

Received copy of notice of appeal this 21st day of May, 1936.

(Signed) Arthur Roe, U. S. Atty., by (Signed) Grendel F. Bennett, Asst. U. S. Atty.

[fol. 46] District Court of the United States of America, Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of notice of appeal and acknowledgment in the case of The United States vs. Max Sonzinsky, Criminal No. 14452, as fully as the same appears from the original now on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 21st day of May, A. D. 1936.

D. H. Reed, Clerk. (Seal.)

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

(To Accompany Duplicate Notice of Appeal to the United States Circuit Court of Appeals)

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS

No. 14452

UNITED STATES OF AMERICA

vs.

MAX SONZINSKY

1. Indictment for Violation National Firearms Act, filed May 5, 1936,

2. Arraignment May 11, (plea of not guilty), 1936,

3. Plea to indictment Plea not guilty withdrawn by leave of court, demurrer filed—demurrer overruled, and the plea of not guilty again entered, May 18, 1936,

4. Motion to withdraw plea of guilty denied ——, ——,

5. Trial by jury, May 18, 1936,

[fol. 47] 6. Verdict and finding of guilt to 1st and 2nd counts (court directed not guilty to 3rd and 4th counts) May 18, 1936,

7. Judgment—(with terms of sentence) 18 months U. S. Pen. Leavenworth, Kansas, and fined 500.00 and stand committed entered May 21, 1936,

8. Notice of appeal filed May 21, 1936 (supersedeas allowed).

Dated May 21, 1936.

Attest: D. H. Reed, Clerk, United States District Court. (Seal.)

Endorsed: Filed May 28, 1936, Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-eighth day of May, 1936, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936

No. 5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

The Clerk will enter my appearance as counsel for the appellant.

Harold J. Bandy, Granite City, Illinois.

Endorsed: Filed May 28, 1936, Frederick G. Campbell, Clerk.

[fol. 48] And afterwards, to-wit: On the twenty-eighth day of May, 1936, there was filed in the office of the Clerk of this court an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936

No. 5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

The Clerk will enter my appearance as counsel for the appellant.

John M. Karns, Spivey Building, East St. Louis, Illinois.

Endorsed: Filed May 28, 1936, Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the third day of June, 1936, there was filed in the office of the Clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936

No. 5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

The Clerk will enter my appearance as counsel for the appellee.

Arthur Roe, U. S. Attorney, Danville, Ill.

Endorsed: Filed June 3, 1936, Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the first day of September, 1936, there was filed in the office of the Clerk of this court a petition of appellee to change date of hearing, which said petition is in the words and figures following, to-wit:

[fol. 49] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 5908

MAX SONZINSKY, Appellant,

vs.

THE UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States from the Eastern District of Illinois

PETITION OF APPELLEE TO CHANGE DATE FIXED FOR HEARING

To the Honorable Judge of the Circuit Court of Appeals:

Your petitioner, the United States of America, by Arthur Roe, United States Attorney in and for the Eastern District

of Illinois respectfully represents and shows unto your Honor that the above entitled cause is now pending on Appeal in the Circuit Court of Appeals for the Seventh Circuit from the Eastern District of Illinois; that the briefs and arguments of each party hereto have been filed in regular manner with the Clerk of said Circuit Court of Appeals for the Seventh Circuit.

Petitioner further shows that in pursuance of Rule 34 of the Rules of the Circuit Court of Appeals for the Seventh Circuit, the Clerk has designated October 7th, 1936 as the time fixed for argument in this cause before said Court, and has notified the respective parties thereof.

Your Petitioner would further show that the October Term of Court in and for the Eastern District of Illinois convenes at Cairo, Illinois on the first Monday in October, namely October 5th, 1936, for trial of criminal cases.

[fol. 50] Petitioner will further show that said term and the trials of criminal cases set at the above time and place will continue for a period of at least one week and that by reason of this setting of criminal cases at Cairo it will be necessary for the United States Attorney in and for the Eastern District of Illinois and his Assistants to be in Cairo at that time.

Wherefore, your petitioner prays that the date of the hearing of this cause be changed by order of your Honor to some date subsequent to October 10th, A. D. 1936.

Arthur Roe, United States Attorney in and for the Eastern District of Illinois.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

Grendel F. Bennett, being first duly sworn on his oath deposes and says that he is an Assistant United States Attorney in and for the Eastern District of Illinois, and that the facts set out in the foregoing petition are true and correct.

Grendel F. Bennett, Assistant United States Attorney.

Subscribed and sworn to before me this 26th day of August, A. D. 1936. Marie Burnett, Deputy United States Clerk.

[fol. 51] [Endorsed:] Copy. No. 5908. United States Circuit Court of Appeals for the Seventh Circuit. Max Sonzinsky, Appellant, vs. The United States of America, Appellee. Appeal from The District Court of The United States From the Eastern District of Illinois. Petitioner of Appellee to change date fixed for hearing.

[fol. 52] At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room in the City of Chicago, in said Seventh Circuit on the sixth day of October, 1936, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Six and of our Independence the One Hundred and Sixty-First.

And afterwards, to-wit: On the 14th day of October, 1936, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 14, 1936.

Court met pursuant to adjournment.

Before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge

5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Eastern District of Illinois

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. Harold J. Bandy, counsel for appellant, and by Mr. Arthur Roe and

Mr. Grendel F. Bennett, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the ninth day of November, 1936, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to-wit:

[fol. 53] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1936, OCTOBER SESSION, 1936

No. 5908

MAX SONZINSKY, Appellant,

vs.

THE UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Eastern District of Illinois

November 9, 1936

Before Evans, Circuit Judge, and Lindley and Briggle, District Judges

BRIGGLE, District Judge:

The defendant (appellant here) stands convicted in the lower Court on two counts of an indictment, charging violation of the National Firearms Act, 26 U. S. C. A. 1132-1132q.

The first count charged that defendant, on April 9, 1936, unlawfully carried on the business of a dealer in firearms at 453 Collinsville Avenue, East St. Louis, Illinois, without having paid the special tax therefor as required by Section 2 of the Act.

The second count charged that defendant unlawfully received and had in his possession a certain firearm, to-wit a sawed-off shot gun with a 15 7/8 inch barrel, which had come into his possession not in pursuance of a written order from the said defendant on application upon a blank, in duplicate, issued by the Commissioner of Internal Revenue.

The sections of the act particularly pertinent to the in-

[fol. 54] quiry at hand are Secs. 1a, 2, 4, and 6, and are appended in a footnote.*1

The errors assigned challenge the sufficiency of the evi-
[fol. 55] dence to support the charges in the indictment and assert the unconstitutionality of the Act.

Sufficiency of the Evidence.—The entire evidence submitted to the jury consisted of the testimony of four witnesses and the introduction in evidence of the gun in question. The testimony of witnesses LeGrand and Dowling concerned their visit to defendant's store on April 9, 1936, at the address indicated in the indictment, a place where defendant had for sale various items of hardware, heaters for automobiles, tools, light fixtures, guns and other items

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*1. Sec. 1(a) The term "firearm" means a shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

Sec. 2(a) Within fifteen days after the thirtieth day after June 26, 1934, or upon first engaging in business, and thereafter on or before the 1st day of July of each year, every importer, manufacturer, and dealer in firearms shall register with the collector of internal revenue for each district in which such business is to be carried on his name or style, principal place of business, and places of business in such district, and pay a special tax at the following rates: Importers or manufacturers, $500 a year; dealers, other than pawnbrokers, $200 a year; pawnbrokers, $300 a year. Where the tax is payable on the 1st day of July in any year it shall be computed for one year; where the tax is payable on any other day it shall be computed proportionately from the 1st day of the month in which the liability to the tax accrued to the 1st day of July following.

(b) It shall be unlawful for any person required to register under the provisions of this section to import, manufacture or deal in firearms without having registered and paid the tax imposed by this section.

Sec. 4(a) It shall be unlawful for any person to transfer a firearm except in pursuance of a written order from the

usually carried in a small store. Upon inquiry he showed witnesses different shotguns and later inquired if they would be interested in a Winchester, sawed-off pump gun. Upon advice that they would, he produced such gun which was sold to witness for $10.00 (this was the gun on which Count 2 was predicated). The witness Hart testified that the length of the barrel of this gun was 15⅝ inches. The only other witness was L. J. Wahl whose entire testimony as shown by the record was as follows:

"My name is L. J. Wahl. I live in Springfield, Illinois, I am a clerk in the Internal Revenue Department and have been for seventeen years. I have charge of the registration of firearms in this State. We receive all applications for registration, all applications for special taxes from dealers and pawn-brokers and for the transfer of firearms. Max Sonzinsky is not registered in my office as a dealer in firearms. There is no one registered from 453 Collinsville Avenue, East St. Louis. Max Sonzinsky has not obtained application blanks for the transfer of sawed-off shot guns. Max Sonzinsky has not ever filed a certificate of registration with the Collector of Internal Revenue of this particu-

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person seeking to obtain such article, on an application form issued in blank in duplicate for that purpose by the Commissioner. Such order shall identify the applicant by such means of identification as may be prescribed by regulations under Sections 1 to 18: Provided, That, if the applicant is an individual, such identification shall include fingerprints and a photograph thereof.

(b) The Commissioner, with the approval of the Secretary, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors of internal revenue.

(c) Every person so transferring a firearm shall set forth in each copy of such order the manufacturer's number or other mark identifying such firearm, and shall forward a copy of such order to the Commissioner. The original thereof with stamps affixed, shall be returned to the applicant.

(d) No person shall transfer a firearm which has previously been transferred on or after the thirtieth day after June 26, 1934, unless such person, in addition to complying with subsection (c), transfers therewith the stamp-affixed

lar sawed-off shot gun, marked Government's Exhibit 'A' or any sawed-off shot gun. This is the Eighth Internal Revenue District, and it includes St. Clair County."

While the evidence bearing upon the question of whether defendant was a dealer in firearms within the meaning of the Act was meager, yet we think that under the careful and accurate instructions given by the Court on this question there was competent evidence for the jury to consider and upon which they might properly conclude that defendant was a dealer in firearms within the meaning of the Act, and that he had not paid the tax as provided in Sec. 2, as charged in the First Count of the Indictment.

[fol. 56] The charge in the Second Count was laid under Section 6 of the Act making it unlawful for defendant to receive or possess the gun in question if it had been transferred in violation of Sections 3 or 4. The charge in this Count, however, is narrower than the terms of Section 6, in that it only charges that he possessed a gun in violation of Section 4, that is, that the same "had come into his pos-

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order provided for in this section for each such prior transfer, in compliance with such regulations as may be prescribed under sections 1 to 18 for proof of payment of all taxes on such firearms.

(e) If the transfer of a firearm is exempted from the provisions of sections 1 to 18 as provided in section 13, the person transferring such firearm shall notify the Commissioner of the name and address of the applicant, the number or other mark identifying such firearm, and the date of its transfer, and shall file with the Commissioner such documents in proof thereof as the Commissioner may by regulations prescribe.

(f) Importers, manufacturers, and dealers who have registered and paid the tax as provided for in section 2(a) shall not be required to conform to the provisions of this section with respect to transactions in firearms with dealers or manufacturers if such dealers or manufacturers have registered and have paid such tax, but shall keep such record and make such reports regarding such transactions as may be prescribed by regulations under sections 1 to 18.

Sec. 6. It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of section 3 or 4.

session not in pursuance of a written order from the said (defendant) on application upon a blank, in duplicate, issued by the Commissioner of Internal Revenue." The only possession of the gun that the evidence supports was the possession of defendant on April 9, 1936, (this appears to be conceded), and consequently any "transfer" of the gun antedating that time, without a written order from the defendant in violation of Section 4 would constitute an offense under the Second Count. The important inquiry then is, whether the evidence supports the charge that the gun had been transferred without a written order and in violation of Section 4. The only evidence in the record, even remotely relating to this question is the testimony of the witness Wahl wherein he says, "Max Sonzinsky has not obtained application blanks for the transfer of sawed-off shot guns." (*Footnote 2.)

Surely it cannot be concluded that because the defendant had not obtained from the Collector "application blanks" for the transfer of sawed-off shot guns that, therefore, the gun was transferred without a written order. It must be borne in mind that it was his possession as a transferee that was alleged to be unlawful and he was charged with no violation of the Act as a transferor of the gun. Subdivision A of Section 4 does not in terms place any burden upon either the transferor or transferee to obtain "application forms". It provides that "It shall be unlawful for any person to transfer a firearm except in pursuance of a written order from the person seeking to obtain such article, on an application form issued in blank in duplicate for that purpose by the Commissioner." It also provides for proper identification and later subdivisions provide that the Commissioner shall furnish suitable forms to be distributed to the Collectors, provides for details in filling out such orders and for forwarding a copy to the Commissioner and the original to the applicant.

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*2. The witness' statement that defendant had not filed a certificate of registration with the Collector of this gun was in support of Count Three of the Indictment which charged a failure to register in violation of Section 5, and which count was taken from the jury. This statement had no bearing upon the charge in Count Two.

[fol. 57] The "written order" contemplated by the Act is an order to be given by the prospective transferee to the transferor. Such "order" form is to be made up in part from information to be furnished by the transferee and part from information to be supplied by the transferor, and when completed, the burden is placed upon the transferor to forward the same to the Commissioner. This is completely borne out by Regulations 88 issued by the Commissioner of Internal Revenue pursuant to Section 12 of the Act. No great significance can be attached to the proof that defendant "had not obtained application blanks for the transfer of sawed-off shot guns."

We assume that it might well be that the person who had such articles for sale would provide the necessary implements for effecting a lawful transfer of the same, including the blank for the "written order" from the prospective purchaser. In any event the mere proof that defendant had not obtained blanks from the Collector fell far short of proof that such firearm had been transferred "not in pursuance of a written order," as charged in the Second Count of the Indictment. We think, therefore, that the proof fails to support the conviction under the Second Count.

The Constitutional Question.—In view of our disposition of the fact question and its controlling application to Count Two of the Indictment, our consideration of the constitutional question will be limited in its scope to the First Count of the Indictment. This count charges in simple language the violation of Section 2 of the Act in that defendant is charged with carrying on the business of a dealer in firearms without payment of the special tax of $200.00 per annum therefor.

The entire argument in support of the asserted invalidity of the Act is directed at the Act as a whole without regard to the well recognized principle that courts will, if possible, sustain the valid portions of an Act without striking down the legislation as a whole if such a result may be reached without destroying the purpose of the Act and without doing violence to the legislative intention. The argument is advanced also without consideration of Section 16 of the Act, which provides that, "If any provision of Sections 1 to 18, or the application thereof to any person or circumstance, is held invalid, the remainder of Sections 1 to 18, and the application of such provision to other persons or circumstances, shall not be affected thereby."

Upon the facts before us we may safely assume that if the constitutional validity of the Act is to be sustained the Con-
[fol. 58] gressional authority must be found in the taxing power of Congress under Article I, Section 8 of the Constitution. The authority of Congress to levy taxes is a broad one and has from the earliest time been a much controverted question before the court of last resort. The legal principles surrounding the exercise of such authority have found expression in a long line of cases. The Congressional power has been sustained in the following leading cases:

Veazie Bank v. Fenno, 8 Wall. 533.
In re Kollock, 165 U. S. 526.
McCray v. U. S., 195 U. S. 27.
Flint v. Stone Tracy Co., 220 U. S. 107.
U. S. v. Doremus, 249 U. S. 86.

The Acts of Congress were held to be outside the constitutional authority in the following cases:

Bailey v. Drexel Furniture Co., 259 U. S. 20.
Linder v. U. S., 268 U. S. 5.
U. S. v. LaFranca, 282 U. S. 568.
Schecter v. U. S., 295 U. S. 495, 79 L. Ed. 1570.
U. S. v. Butler, 297 U .S. 1, 80 L. Ed. 287.
Hammer v. Dagenhart, 247 U. S. 251.
Carter v. Carter Coal Co., 298 U. S. 238, 80 L. Ed. 749.
U. S. v. Constantine, 296 U. S. 287.

It is alleged that the only real purpose of the Act before us is the suppression of crime and that the imposition of a tax is but a pretended purpose; that it clearly invades the police power of the States and as a tax measure is but a sham and a subterfuge; that, conceding its beneficent aims, its purpose is purely penal and aimed at suppression of crime and not the raising of revenue.

The early case of Veazie Bank v. Fenno, supra, recognized the principle that "the Judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers," even though they may be exercised oppressively, adding that "the responsibility of the legislature is not to the Courts but to the people by whom its members are elected * * * so if a particular tax bears heavily * * * it cannot for that reason *only* be pronounced contrary to the constitu-

tion." This principle was recognized by former Chief Justice Taft in denying the legislative power to tax a factory ten per cent of its net profits if it employed children under fourteen years of age in the Child Labor Tax case, Bailey v. Drexel Furniture Company, supra.

[fol. 59] Justice Taft distinguishes Veazie v. Fenno, Flint v. Stone Tracy Co., McCray v. United States, and United States v. Doremus by concluding that each of the prior acts, superficially, at least, was nothing but a tax measure. The language used, and the method of administration provided, created no doubt but that Congress intended to collect a bona fide tax. While in the Child Labor Tax Case he finds it apparent from the face of the act that prohibition and regulation were the prime considerations which prompted enactment. The Supreme Court has not retracted this stand in its recent decisions in Schecter v. United States, United States v. Butler, and Carter v. Carter Coal Co., supra.

The consensus of opinion to be gained from all of the decisions hereinbefore referred to is that courts are not at liberty, by reason of the supposed excessiveness of the tax alone, to invalidate taxing statutes but where the end sought was plainly regulation of a business outside the Congressional authority, as it was in the Child Labor Tax Case and many subsequent cases, no matter how worthy, the Court's duty to prevent encroachment upon the Constitution is plain.

The Act in question is entitled "An Act to provide for the taxation of manufacturers, importers, and dealers in certain firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and regulate interstate transportation thereof," and thus evidences no announced purpose outside the constitutional authority. Section two is unusually free from regulative provisions, merely providing for a tax in varying amount upon different classifications of persons and requiring such persons to register their names and addresses and making it unlawful for them to engage in or continue such business without having registered or paid such tax.

The tax thus imposed under Section two can reasonably be said to be for the purpose of producing revenue—it cannot even be said to be unreasonable in requiring a dealer to register and pay a tax of $200.00 per annum. It is unimportant under such circumstances, that such levy may at the same time impose a degree of regulation.

Section two when read in connection with section one, giving meaning to the terms employed is complete and not dependent upon other succeeding sections of the Act. See discussion in Carter v. Carter Coal Co., supra.

"A statute must be construed if fairly possible, so as [fol. 60] to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score."

U. S. v. Jin Fuey Moy, 241 U. S. 394.
U. S. v. Standard Brewery, 251 U. S. 210.
Baender v. Barnett, 255 U. S. 224.
U. S. v. LaFranca, 282 U. S. 568.

On the authority of United States v. Doremus, supra, the District Court of Florida held the act constitutional in the case of United States v. Adams, et al., 11 Fed. Sup. 216.

We hold that Section 2 of the Act upon which Count One of the Indictment is based, is valid. As to the constitutionality of other sections of the Act we express no opinion.

The judgment upon Count One is affirmed and the judgment upon Count Two is reversed.

[fol. 61] And on the same day, to-wit: On the ninth day of November, 1936, the following further proceedings were had and entered of record, to-wit:

Monday, November 9, 1936.

Court met pursuant to adjournment.

Before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge

5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Eastern District of Illinois

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby affirmed upon count one of the indictment and reversed upon count two of the indictment.

It is further ordered that this cause be, and the same is hereby remanded to the said District Court.

And afterwards, to-wit: On the twenty-fifth day of November, 1936, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

[fol. 62] And afterwards, to-wit: On the second day of December, 1936, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 2, 1936.

Court met pursuant to adjournment.

Before Hon. Evan A. Evans, Circuit Judge: Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge

5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Eastern District of Illinois

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

And afterwards, to-wit: On the fourth day of December, 1936, there was filed in the office of the court a petition for

stay of mandate, which said petition for stay of mandate is in the words and figures following, to-wit:

[fol. 63] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

Cause No. 5908

MAX SONZINSKY, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the Eastern District of Illinois

PETITION FOR STAY OF MANDATE

Now comes Max Sonzinsky, above named appellant, by John M. Karns and Harold J. Bandy, his attorneys, and respectfully petitions this Honorable Court to stay the issuance of the mandate in this case a sufficient length of time to permit appellant to file, with the clerk of the Supreme Court of the United States, his petition for the writ of certiorari to review the judgment of this Honorable Court affirming the judgment of the District Court.

Petitioner respectfully represents that he desires to ask for the issuance of the writ of certiorari upon the following grounds:

(1) That the Firearms Act, upon which this prosecution is predicated is unconstitutional because it is a police measure that invades the powers of the states that are specifically reserved to the individual states; that it is a police measure that exceeds the powers delegated to Congress by the constitution.

(2) That there is no evidence in the record upon which to base a conviction of appellant under count two of the indictment, which count charges appellant with having been a dealer in firearms within the meaning of the act.

Petitioner further represents that the Firearms Act is a recent enactment and has never been passed upon by the Supreme Court of the United States.

Wherefore, appellant respectfully prays that time may be allowed him in which to apply for the writ of certiorari, and that the issuance of the mandate of this Honorable Court shall not issue during said time.

Max Sonzinsky, Appellant, by John M. Karns, Spivey Building, East St. Louis, Illinois, Attorney for Appellant. Harold J. Bandy, Granite City, Ill., Atty. for Appellant.

[fol. 64] STATE OF ILLINOIS, . .
County of St. Clair, ss:

John M. Karns, of East St. Louis, Illinois, and Harold J. Bandy, of Granite City, Illinois, both being first duly sworn, states that they are the attorneys for appellant Max Sonzinsky in a case numbered 5908, in the United States Circuit Court of Appeals for the Seventh Circuit, entitled Max Sonzinsky, appellant, vs. United States of America.

Affiants further state that they intend to apply to the Supreme Court of the United States for the issuance of the writ of certiorari to review the judgment of the United States Circuit Court of Appeals in said case, and that they intend to make such application at the earliest opportunity, and they will not permit any delay to intervene.

Affiants further state that the said application will be made in good faith for the purpose of attacking the constitutionality and validity of the "Firearms Act" on which said prosecution is based, and that said application for certiorari will not be presented for frivolous reasons or merely to accomplish delay.

Affiants further state that, immediately after filing such petition for the writ of certiorari with the clerk of the Supreme Court of the United States, affiants will furnish the clerk of the United States Circuit Court of Appeals for the Seventh Circuit with proof that they have filed said petition.

John M. Karns. Harold J. Bandy.

Subscribed and sworn to before me this 3 day of December, A. D. 1936. Roscoe Forth, Notary Public. (Seal of Roscoe Forth, Notary Public, Madison County, Illinois.)

[Endorsed:] Filed Dec. 4, 1936, Frederick G. Campbell, Clerk.

[fol. 65] And afterwards, to-wit: On the 4th day of December, 1936, the following further proceedings were had and entered of record, to-wit.

Friday, December 4, 1936.

Court met pursuant to adjournment.

Before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge

5908

MAX SONZINSKY

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Eastern District of Illinois

Now this day comes counsel for appellant and presents a motion for a stay of the mandate of this court, pending a petition to the Supreme Court of the United States for a writ of certiorari.

On consideration whereof: It is now here ordered that the mandate in this cause be, and the same is hereby stayed until the further order of this court.

It is further ordered that counsel for appellant proceed with diligence and promptly file the petition for a writ of certiorari in the Supreme Court of the United States and forthwith file in this court proof of the filing of said petition in said court.

[fol. 66] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 23, inclusive, contain a true copy of the proceedings had and papers filed, excepting briefs of counsel and petition for rehearing, in the case of Max Sonzinsky, Appellant, vs. The United States of America, Appellee, No. 5908, October Term, 1936, as the same remains upon the files

and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 21st day of December, A. D. 1936.

Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal United States Circuit Court of Appeals, Seventh Circuit.)

[fol. 67] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 15, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, limited to the question of the constitutional validity of the statute in its application under the first count of the indictment.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.